

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOKHA KONG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

E-FILED - 11/29/07

CASE NOS. C-02-01964-RMW
CR-98-20005-RMW

ORDER DENYING MOTION TO
CORRECT, SET ASIDE OR VACATE
SENTENCE

Sokha Kong moved on April 22, 2002 to correct, set aside, or vacate his sentence under 28 U.S.C. § 2255 for alleged ineffective assistance of counsel. He claims that counsel was ineffective for failing to argue that he should receive credit for the time he had served on related state charges (but which involved different robberies) at the time he was sentenced for his federal violations. Movant/defendant was not prejudiced by the alleged failure to argue for the credit as the court was fully aware of the facts at the time it imposed the federal sentence. The court imposed a low end sentence to run concurrently with his state sentence except for the 60 month portion required to run consecutively under 18 U.S.C. § 924(c). Even assuming defense counsel failed to make the argument Kong suggests he should have made, there is no reasonable probability that, but for counsel's failure, the result of the proceeding would have been different. Therefore, the petition is summarily denied pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings.

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The Clerk may close the file.

DATED: 11/27/07



RONALD M. WHYTE
United States District Judge

1 Copy of Order E-Filed and Mailed to:

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